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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GOPAL B. AVINASH

Appeal 2009-005218
Application 10/723,189
Technology Center 2600

Before JOSEPH F. RUGGIERO, CARLA M. KRIVAK, and BRADLEY W. BAUMEISTER, *Administrative Patent Judges.*

RUGGIERO, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

STATEMENT OF THE CASE

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of claims 1, 2, 4-7, 9-15, and 17-29. Claims 3, 8, and 16 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Appeal Brief (filed February 15, 2008) and the Answer (mailed August 18, 2008) for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant's Invention

Appellant's invention relates to the processing of image data based upon a "fuzzy" or flexible segmentation-based image operation which results in the creation of one or more maps. According to Appellant, unlike previous techniques in which the masked or mapped data falling above or below a threshold is processed separately, at least two thresholds for masking or mapping are utilized resulting in a subdivision of the image data into more than two regions. (*See generally* Spec. 3:2-19).

Representative claim 1 is illustrative of the invention and reads as follows:

1. A method for processing image data comprising:

identifying a first group of pixels exhibiting a first characteristic, wherein the first characteristic corresponds to structures in the image data;

identifying a second group of pixels exhibiting a second characteristic,

wherein the second characteristic corresponds to non-structures in the image data;

identifying a third group of pixels exhibiting the first and second characteristics;

processing the first group of pixels in accordance with at least a first operation;

processing the second group of pixels in accordance with at least a second operation;

processing the third group of pixels in accordance with the at least first and second operations; and

blending values resulting from processing of the third group of pixels by the first process with values resulting from processing of the third group of pixels by the second process.

The Examiner's Rejection

The Examiner relies on the following prior art to show unpatentability:

Fan	US 2002/0093686 A1	Jul. 18, 2002

Claims 28 and 29 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.[2]

Claims 1, 2, 4-7, 9-15, and 17-29, all of the appealed claims stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fan.

[2] The Examiner indicates (Ans. 3) that claims 26 and 27 were inadvertently included in the claims rejected under 35 U.S.C. § 101 in the Final Office action.

ANALYSIS

I. THE 35 U.S.C. § 101 REJECTION OF CLAIMS 28 and 29.

Appellant's arguments are persuasive in convincing us of error in the Examiner's stated position and, accordingly, this rejection is not sustained. The Examiner has rejected claims 28 and 29 as non-statutory for being directed to a computer-related invention that includes descriptive material claimed as descriptive material *per se*. According to the Examiner (Ans. 4 and 13), claims 28 and 29 are directed merely to an "image" which the Examiner considers to be nonfunctional descriptive material. In the Examiner's view (*id.*), nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not fall within any of the categories of statutory subject matter. We agree with Appellant (App. Br. 9), however, that, contrary to the Examiner's contention, claims 28 and 29 recite a computer memory *device*, which is an article of manufacture, that stores an image and, accordingly, are not merely directed to image data *per se*.

II. THE 35 U.S.C. § 102(b) REJECTION OF CLAIMS 1, 2, 4-7, 9-15, AND 17-29 BASED ON FAN.

Appellant's arguments with respect to representative independent claim 1 focus on the contention that, in contrast to the claimed invention in which two *distinct* processes are performed exclusively on two groups of pixels and *both* processes are performed on a third group of pixels, the Fan reference discloses performing the *same* operation on all input pixel values.[3]

[3] Appellant argues rejected independent claims 1, 11, 20, and 24-27 together as a group and has made no separate arguments for the patentability of the

According to Appellant (App. Br. 10-12), Fan discloses performing the same process, i.e., the weighted application of low pass and notch filters, on all pixels, and not distinct operations performed exclusively on at least two of three groups of pixels.

We do not agree with Appellant. Initially, we note that, as pointed out by the Examiner (Ans. 15), while Appellant argues that Fan applies only one process to all pixels, it is apparent from the disclosure of Fan that two processes, i.e., a notch filter process and a low pass filter process, are being applied (Fig. 3, ¶ [0020]).

Further, we find Appellant's arguments to be unpersuasive as they are not commensurate with the scope of representative claim 1. It is our opinion that Appellant's argument improperly attempts to narrow the scope of the claim by implicitly adding disclosed limitations which have no basis in the claim. *See In re Morris*, 127 F.3d 1048, 1054-55, (Fed. Cir. 1997).

Although Appellant argues that the claims require that distinct processing operations be exclusively performed on first and second groups of pixels, we agree with the Examiner that no such exclusivity requirement appears in the claims. As explained by the Examiner (Ans. 15), there is no claim language which precludes the low pass filter and notch filter operations of Fan from being performed on both the first and second groups of pixels as long as at least the low pass filter operation is performed on the first pixel group and at least the notch filter operation is performed on the second group. Further, since the notch filter operation and low pass filter

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rejected dependent claims. *See* App. Br. 10-12. Accordingly, we select claim 1 as representative of all claims on appeal. *See* 37 C.F.R. § 41.37(c)(1)(vii).

operation in Fan are performed on all pixels, the claimed requirement that at least first and second operations are performed on a third group of pixels is satisfied.

Lastly, while the Examiner recognizes that, in the interpretation of Fan discussed *supra*, the notch filter and low pass filter operations are performed prior to the splitting of pixels into three groups, we find no error in the Examiner's alternative interpretation of Fan which focuses on the processing required in Fan to arrive at the descreened output pixel value discussed in paragraphs [0024-0026]. As explained by the Examiner (Ans. 18), Fan arrives at the pixel output value P_{out} by applying low pass filter pixel values for the first pixel group (below the example threshold value of 8), applying notch filter pixel values for the second pixel group (above the example threshold value of 32), and applying both the low pass filter values and notch filter values for the third group (between the example thresholds of 8 and 32). We agree with the Examiner that even assuming, *arguendo*, that the claims can be construed to require "exclusive" processing as urged by Appellant, such output pixel processing would satisfy even an "exclusive" operation claim interpretation.

In view of the above discussion, since Appellant has not demonstrated that the Examiner erred in finding that all of the claimed limitations are present in the disclosure of Fan, the Examiner's 35 U.S.C. § 102(b) rejection of representative independent claim 1, as well as claims 2, 4-7, 9-15, and 17-29 not separately argued by Appellant, is sustained.

CONCLUSION OF LAW

Based on the analysis above, we conclude that Appellant has shown that the Examiner erred in rejecting claims 28 and 29 as being directed to non-statutory subject matter under 35 U.S.C. § 101, but has not shown that the Examiner erred in rejecting claims 1, 2, 4-7, 9-15, and 17-29 for obviousness under 35 U.S.C. § 103.

DECISION

The Examiner's rejection of claims 1, 2, 4-7, 9-15, and 17-29, all of the appealed claims, is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v)(2009).

AFFIRMED

gvw

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